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10/764,405	01/23/2004	John Chen	1001.1677101	9509
28075	7590	05/04/2009		
CROMPTON, SEAGER & TUFT, LLC			EXAMINER	
1221 NICOLLET AVENUE			HALI, DEANNA K	
SUITE 800			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55403-2420			3767	
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		05/04/2009	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/764,405	Applicant(s) CHEN ET AL.
	Examiner DEANNA K. HALL	Art Unit 3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 December 2008.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 January 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-166/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

Acknowledgments

1. This office action is in response to the reply filed December 22, 2008.
2. Claims 1-20 are pending in the application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peters et al. (US 5,549,552) ("Peters") in view of Mugge et al. (US 5,478,620) ("Mugge").**

The applied reference has a common assignee with the instant application.

Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference under 37 CFR

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1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). This rejection might also be overcome by showing that the reference is disqualified under 35 U.S.C. 103(c) as prior art in a rejection under 35 U.S.C. 103(a). See MPEP § 706.02(l)(1) and § 706.02(l)(2).

Peters discloses a balloon catheter assembly and method comprising: a first tubular member 34 having a proximal portion and a distal portion with a lumen 43 extending between the proximal portion and the distal portion; a balloon 37 having a proximal waist length 38, a distal waist length 39 and an expandable region 45 disposed about the distal portion; and a tie layer 47 disposed between the proximal waist length or distal waist length and the first tubular member C9 L17-22, C5 L30-36.

Peters discloses the invention as substantially claimed (see above). However, Peters does not directly disclose the tie layer comprising a polyester polymer and a polyamide polymer. Mugge teaches at least one intermediate layer made of a mixture of polyester and a polyamide to force-lockingly connect together the inner and outer layer of a polyamide pipe C1 L47-53. The tie layer of Mugge further comprises a copolymer of polyester and polyamide, see Claim 1. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified the tie layer of Peters with the polyester and polyamide tie layer as taught by Mugge for connecting together the tubular members.

Peters further discloses that this tie layer may be co-extruded over the first tubular member 34. C9 L17-22. By the teachings of Mugge the intermediate (tie) layer comprises a polybutylene terephthalate C4 L41-63.

In reference to claims 2-5, Peters discloses that alternative materials as known to those skilled in the art can be used for the tubular member and the balloon C3 L37-42. The balloon can be formed from an aromatic polyester or a PET and the tubular member can be formed from a polyamide or a polyether block amide C6 L54- C7 L5.

Response to Arguments

5. Applicant's arguments have been fully considered but they are not persuasive. Applicant argues that one of skill in the catheter art would not combine the references of Peters and Mugge due to as applicant contends, contrary objectives. This argument is not persuasive. Wherein Peters is directed to improved "trackability", Mugge also allows for trackability of the multilayer plastic pipe. Examiner does not interpret "pipe" to denote rigidity as applicant does. In fact, Mugge teaches that reinforcers or fillers can be added to the polyamides C3 L30-32. This would suggest some bending or trackability prior to addition of any optional reinforcers. Additionally, Mugge describes bending of the pipe at C3 L51-54. Thus, the objectives of the two pieces of art are not contrary to preclude their combination.

6. Applicant further argues that Mugge does not teach a polyamide layer (which can be a copolymer of polyester and polyamide) disposed between a polyester layer and the first tubular member. This argument is not persuasive. Mugge discloses that pipes can

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be manufactured that are made of 5 or 7 layers by incorporating other layers made of polyamide or of polyamide/polyester C3 L54-57. Thus, depending on the number of layers and the composition of the layers (either polyamide or polyamide/polyester), a polyamide (polyamide/polyester) could be disposed between a polyester (polyamide/polyester) layer and the first tubular member.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEANNA K. HALL whose telephone number is (571)272-2819. The examiner can normally be reached on M-F 9:00am-5:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on 571-272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Deanna K. Hall/
Examiner, Art Unit 3767
4/30/09
/Kevin C. Sirmons/
Supervisory Patent Examiner, Art Unit 3767